



November 4, 2009

The Honorable Robert C. Scott
Chairman, Subcommittee on Crime, Terrorism and Homeland Security
House Judiciary Committee
United States House of Representatives
Washington, DC 20515

The Honorable Louie Gohmert
Ranking Member, Subcommittee on Crime, Terrorism and Homeland
Security
House Judiciary Committee
United States House of Representatives
Washington, DC 20515

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

MICHAEL W. MACLEOD-BALL
ACTING DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

Dear Chairman Scott and Ranking Member Gohmert:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless activists and supporters, and fifty-three affiliates nationwide, we applaud the Subcommittee for its hearing “Girls in the Juvenile Justice System: Strategies to Help Girls Achieve Their Full Potential.” This important hearing helped to shine a light on an aspect of the juvenile justice system that is often ignored – the plight of the more than 14,000 girls currently incarcerated in the United States, and we are pleased to have an opportunity to address some of the specific concerns articulated by Committee members.

The ACLU has a longstanding commitment to the welfare of incarcerated children, and we are especially attentive to the experiences and needs of incarcerated girls. We have investigated juvenile conditions of confinement across the country, brought civil rights actions where conditions fell below constitutional standards, and conducted other advocacy on behalf of girls and boys in the juvenile justice system. Within the ACLU Women’s Rights Project, moreover, we work specifically on behalf of girls in the juvenile justice system. As part of this work, we have conducted one-on-one interviews with well over a hundred girls in various states, amassing a wealth of knowledge and a national perspective on the needs of incarcerated girls and the challenges faced by state agencies in meeting those needs.

One aspect of the hearing that deserves emphasis is the urgency of the need for reform. While further research can help, girls are suffering from a broken system at this moment, and there are several areas of juvenile justice administration where the problems, and their solutions, are already known. As elucidated by the testimony of Eileen Larence of the Government Accountability Office, millions of dollars are being spent on research, yet

the yield from such expenditures is often neither immediate nor unambiguous. Let us fix what can be fixed right now, even as the research continues.

One settled fact about the juvenile justice system is that too many girls are being locked up, including those who pose no safety threat and who are damaged, not helped, by incarceration. As confirmed by Thomas Stickrath of the Ohio Department of Youth Services, inappropriately incarcerating low and low-moderate risk children actually harms them. Nevertheless, children are still being incarcerated for “status offenses” – acts like truancy or running away from home, that are not crimes if committed by adults – as well as for technical violations and minor and non-violent crimes. The policy implication of this fact is that resources must be diverted away from the maintenance of large, prison-like institutions, and toward prevention programs and community-based alternatives to incarceration like those represented at the hearing and those envisaged in your Youth PROMISE Act (H.R. 1064). At the same time, juvenile courts must be made to divert children away from state institutions whenever possible, reserving remand to such institutions for cases when every other alternative has been tried and has failed.

One important fact not noted at the hearing is that girls are especially harmed by the unavailability of non-incarcerative and lower-security alternatives. Our research has revealed that in many jurisdictions, such programs for girls are absent, even when they are offered for boys. For example, in Maryland, the paucity of alternatives to incarceration means that girls are confined in a prison-like institution even when their male counterparts would be sent to a home-like community facility. Similarly, in Texas, there is only one halfway house for girls in the entire state, as compared with several for boys, resulting in effectively longer sentences for girls and eventual placement in a halfway house many hours away from their homes and families.

We therefore urge that the highest priority be placed on reducing the over-incarceration of girls, and ceasing the practice of placing girls in excessively secure facilities. As more than one speaker noted, this is not only more humane, it is the only fiscally responsible course of action. While the speakers quoted costs of incarceration in the tens of thousands of dollars per child, in New York, the cost is a staggering \$150,000 to \$200,000 per child, each year. This represents a huge sum that can and should be redirected to local prevention and diversion programs. Dramatic reductions in children’s incarceration in the U.S. are, moreover, within our reach. Looking internationally, some countries which we consider our peers incarcerate many fewer children than we do, or even none at all.

While reducing the population of girls in prison is a paramount concern, conditions of confinement in juvenile institutions also present urgent problems. As described by Tiffany Rivera and Nadiyah Shereff, the two young women who spoke at the hearing, incarcerated children regularly experience abuse, neglect, and callous indifference. The experiences of Tiffany and Nadiyah match those of the many incarcerated girls whom we have interviewed face-to-face.

One aspect of abusive conditions that is widespread throughout juvenile prisons in the U.S. is solitary confinement. As Nadiyah testified: “Being confined to a tiny cement room was one of the hardest things I have ever had to experience . . . I became even more withdrawn and angry.” Although the isolated confinement of children is prohibited by U.S. law as well as international human rights norms, our investigations have revealed that such confinement occurs every day in

juvenile prisons in the U.S. Isolation is especially harmful to girls in light of their mental health profiles. As Thomas Stickrath noted, an astonishing 91 percent of girls incarcerated in Ohio are on the mental health caseload. Numerous studies have established isolation compounds mental illness, even in adults. In children, its effects are even more devastating, and we have witnessed children in solitary confinement cells cutting themselves, banging their heads and other parts of their bodies against cell walls, and screaming for help.

There is an even more disturbing aspect to the isolation of children in juvenile facilities: Many are placed in isolation, not for hurting other people, but for committing self-harm, or confessing that they have considered suicide. Children are isolated for self harm every day in, for example, Texas and Puerto Rico. As Ranking Member Gohmert's question to Tiffany revealed, such self-harm is a cry for help, and no response to an emotional crisis could be more destructive to a child than to punish her by abandoning her alone in a cell. Ranking Member Gohmert captured the heart of the matter when he stated: "The difference is when somebody lets you know that you have value, that you make a difference, that they care about you." Solitary confinement communicates the opposite, namely, that a child and her profound pain are not worth bothering with.

Both of these problems, over-incarceration and the isolation of children, are amenable to a federal legislative solution. We would be delighted to contribute our substantive expertise, as well as our legislative know-how, to your efforts to respond to these pressing problems.

In addition, our research confirms the array of other abuses described by the participants in your hearing, including the misuse of psychotropic medications, the routine and demeaning strip searching of girls, the overuse of physical restraints, the violations of children's privacy rights, and the lack of consistent access to counseling and other needed services. It is also vital to note that while rehabilitative services are essential, they cannot succeed against a background of institutionalized abuse. Thus, while it is unarguably worthwhile to research the best ways to deliver services to girls, it is equally important to eliminate abusive practices that we know to be widespread, such as the isolation of children and the other practices identified by the hearing speakers.

In closing, we again commend the Committee for its attention to this vital issue, as well as the opportunity to provide this statement for the record. The ACLU looks forward to working with you and other members of Congress on ways to improve the juvenile justice system for girls.

ACLU Washington Legislative Office
Michael W. Macleod-Ball, Acting Director
Jennifer Bellamy, Legislative Counsel
jbellamy@dcaclu.org

ACLU Women's Rights Project
Lenora M. Lapidus, Director
Mie Lewis, Staff Attorney

Enclosure